



POLICE DEPARTMENT

March 7, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Dalia Romero
Tax Registry No. 900613
Queens Court Section
Disciplinary Case Nos. 82402/06,
82510/07, 82635/07 and 82732/07

The above-named member of the Department appeared before me on October 11, 12, 16 and 19, 2007, and on November 2, 2007, charged with the following:

Disciplinary Case No. 82402/06

1. Said Police Officer Dalia Romero, while assigned to International Affairs Bureau, while on-duty, on or about November 2, 2006, having been directed by New York City Police Deputy Inspector Kevin Holloran, to comply with the directives of the Counseling Unit to participate in an in-patient counseling program, did fail and neglect to comply with said order. *(As amended)*

P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS

Disciplinary Case No. 82510/07

1. Said Police Officer Dalia Romero, while assigned to Queens Court Section, while on-duty, on or about December 19, 2006, having been directed by New York City Police Captain Jeffrey Mishula, to comply with the directives of the Counseling Unit to participate in an in-patient counseling program, did fail and neglect to comply with said order. *(As amended)*

P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS

Disciplinary Case No. 82635/07

1. Said Police Officer, Dalia Romero, assigned to the Internal Affairs Bureau, while on sick report, on or about July 26, 2006, was wrongfully and without just cause absent from said Officer's residence without permission of said Officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

P.G. 205-01, Page 2, Paragraph 4 - REPORTING SICK, PERSONNEL MATTERS

2. Said Police Officer, Dalia Romero, assigned to the Internal Affairs Bureau, while on sick report, on or about July 27, 2006, was wrongfully and without just cause absent from said Officer's residence without permission of said Officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

P.G. 205-01, Page 2, Paragraph 4 - REPORTING SICK, PERSONNEL MATTERS

3. Said Police Officer, Dalia Romero, assigned to the Internal Affairs Bureau, while on-duty, on or about August 8, 2006, did wrongfully cause false entries to be made in Department records, to wit: said Officer left Medical Division at approximately 1130 hours, but signed out in the Medical Division log at 1323 hours.

P.G. 203-05, Page 1, Paragraph 4 - PERFORMANCE ON DUTY/
GENERAL REGULATIONS

4. Said Police Officer, Dalia Romero, assigned to the Internal Affairs Bureau, while on-duty, on or about August 8, 2006, being scheduled to perform a tour of 0700 hours until 1523 hours, said Officer was absent without leave between approximately 1130 hours and 1323 hours.

P.G. 203-05, Page 1, Paragraph 1 & 2 - PERFORMANCE ON DUTY/
GENERAL REGULATIONS

P.G. 205-18, Page 1 & Page 2 - ABSENT WITHOUT LEAVE/
PERSONNEL MATTERS

Disciplinary Case No. 82732/07

1. Said Police Officer Dalia Romero, assigned to Queens Court Section, while on duty, on or about March 9, 2007, having been directed by New York City Police Captain Jeffrey Mishula, to comply with the directives of the Counseling Unit to participate in an in-patient counseling program, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 82402/06

The Respondent is found Guilty.

Disciplinary Case No. 82510/07

The Respondent is found Guilty.

Disciplinary Case No. 82635/07

The Respondent is found Guilty.

Disciplinary Case No. 82732/07

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Steven McCole, Deputy Inspector Kevin Holloran, Lieutenant Dominick Valenti, Sergeant Daniel Sweeney, Captain Jeffrey Mishula, and Sergeant Nicholas Auriana.

Sergeant Steven McCole

McCole, who is assigned to the Medical Division's Absence Control Investigations Unit (ACIU), testified that he was directed by Sergeant Nicholas Auriana to conduct an observation at the Respondent's residence on July 26, 2006. Because he had never previously seen the Respondent, before he drove to the Respondent's residence he obtained a photograph of the Respondent from Sergeant Auriana so that he would be able to recognize the Respondent if she came outside. McCole parked his unmarked vehicle across the street from the Respondent's residence and used binoculars to observe the front door of the residence. After he had been there about ten minutes, at about 1155 hours, he observed the Respondent come out of her residence accompanied by a male Hispanic and that she entered the front passenger seat of a Hyundai [REDACTED] bearing New York license plate number [REDACTED].

When the male Hispanic drove the vehicle away from the residence, McCole followed and proceeded to conduct a moving surveillance of the vehicle. When the Hyundai was on the Van Wyck Expressway, McCole pulled his vehicle up beside the Hyundai right next to the vehicle. He looked over and he could see the Respondent's face clearly.

On cross-examination, McCole testified that he was alone in the unmarked 2005 Ford Minivan with dark-tinted windows that he used to conduct his observation of the Respondent. He testified that he was not directed to use a video recorder or to take a camera with him on the observation and that he decided not to use it that day. He testified that the Respondent sat in the front passenger seat in the Hyundai and that the male Hispanic, who was about 40 years old, was driving. McCole testified that he voluntarily decided to terminate the surveillance and that he did not lose the vehicle in traffic. He testified that an entry he made on his worksheet which indicated that he had lost the vehicle in traffic was not accurate. McCole testified that he does not know whether anyone else was inside the Respondent's residence that day. He testified that Sergeant Auriana might have told him that the Respondent was suspected of exaggerating an illness but he had no present recollection that Sergeant Auriana told him that.

On redirect examination, McCole testified that he also conducted surveillances of the Respondent's residence on July 21, 2006 and August 9, 2006, but he did not see the Respondent leave her residence on either of those dates. During his observation of the Respondent's residence on August 9, 2006, at about 1437 hours, a Hispanic female came out of the residence, but it was not the Respondent. He determined that the Hyundai was registered to the Respondent by performing a Department of Motor Vehicles check on the vehicle's license plate.

Deputy Inspector Kevin Holloran

Holloran testified that he met the Respondent on November 2, 2006, when she was referred to him for the purpose of being suspended. Holloran testified that it was

standard practice for the Counseling Unit to refer members of the service who refuse to comply with Counseling Unit directives to him. He testified that he spoke at length to the Respondent before he ordered the Respondent to report for in-patient counseling.

On cross-examination, Holloran acknowledged that he has no medical training and that he makes no independent evaluation as to whether a member of the service who is referred to him needs counseling. He testified that he relies on the Counseling Unit's decision that an individual needs treatment based on their assessment of the MOS. He acknowledged that he has never overruled a Counseling Unit decision that an MOS needs treatment.

Holloran testified that he is aware that the Respondent had complied with an order issued to her on October 27, 2006, to report to the Marworth facility for in-patient treatment and that the Respondent reported at Marworth on November 2, 2006. He recalled that the Respondent told him that Marworth was unable to provide medical care for her [REDACTED]. Holloran testified that it was his belief that her health was not in danger because he believed that Marworth had access to medical care. He recalled that the Respondent told him that she considered her health more important than complying with an order. He testified that the Respondent appeared to him to be sincere about her medical concerns. He testified that he was not aware that the Respondent was admitted to a hospital on November 3, 2006. He recalled that the Respondent's husband wanted to pick the Respondent up at the Marworth facility but that the Counseling Unit had indicated that only someone from the Counseling Unit could pick up the Respondent at Marworth and transport her home.

Lieutenant Dominick Valenti

Valenti, who is the commanding officer of the Medical Division's Absence Control Unit, testified that on August 8, 2006, he worked a day tour at the Medical Division. He recalled that he saw the Respondent enter the Medical Division and sign in the Medical Division log as present at 1000 hours. He testified that at about 1020 hours, the Respondent entered the District Surgeon's office and met with Dr. Tsirilakis. At about 1120 hours, Valenti observed the Respondent come out of the District Surgeon's office. Later, Valenti noticed that the Respondent was no longer present at the Medical Division. Police Officer Claudette Gibson told him that she had seen the Respondent standing at the log book with a pen in her hand as if she was going to sign out, but she did not see her sign out in the log. Valenti called the Respondent's commanding officer, Lieutenant Mark Blackford, who told Valenti that the Respondent had requested to take lost time from 1315 hours to 1523 hours, but that the Respondent had not requested to be allowed to take her meal at the Medical Division.

At 1317 hours, Valenti examined the entries in the Medical Division log for August 8, 2006. He observed that the Respondent had entered a sign-out time of "1323" hours. He "scratched" this inaccurate log entry [Department's Exhibit (DX) 1]. Valenti testified that under Patrol Guide 212.02, which regulates meal periods, the Respondent was required to obtain authorization from her commanding officer to take her meal at the Medical Division after her appointment with the District Surgeon was completed.

Valenti recalled that on October 24, 2006, Dr. Lichtenstein told him that he was of the opinion that the Respondent was abusing prescription medications.

On cross-examination, Valenti acknowledged that an examination of the Medical Division log for the one-week period that included August 8, 2006, showed that about half of the members of the service who had signed into the Medical Division log that week because they had to meet with the District Surgeon, never bothered to sign out in the log when they left the Medical Division. Valenti acknowledged that, as far as he knew, no disciplinary action had been instituted against any of the members of the service who had failed to sign out in the Medical Division log that week.

Sergeant Daniel Sweeney

Sweeney, a 20-year member, testified that he has been assigned to the Employee Relations Counseling Unit for over four years and that he presently serves as commanding officer of the unit. He testified that the unit was awarded an operating certificate by the State of New York Office of Alcohol Abuse Services on October 1, 2006, and that all of the counselors assigned to the unit were working on being certified as New York Credentialed Alcohol and Substance Abuse Counselors.

He was on duty at the Counseling Unit on October 27, 2006 when the Respondent appeared at the Counseling Unit. Because it had been determined that the Respondent was addicted to prescription pain killers and needed in-patient rehabilitation, she was presented with a "therapeutic contract" which required her to undergo approximately 28 days of in-patient rehabilitation. He testified that she was told that if she did not agree to the terms contained in the "Treatment Contract & Client Confidentiality Agreement" (the contract) and refused to sign the contract, it was possible that she would be suspended and that if she failed to comply with the terms of the contract she could be disciplined.

She signed the contract (DX 2). She was not provided with a copy of the contract. She immediately reported to a Department authorized in-patient rehabilitation facility in Marworth, Pennsylvania. He learned that on November 2, 2006, the Respondent had left Marworth and come home. He then ordered her to report to the Medical Division where Deputy Inspector Holloran ordered her to go back to Marworth or she would be suspended.

On January 19, 2007, the Respondent was again presented with a "Treatment Contract & Client Confidentiality Agreement" (the contract) requiring her to attend in-patient rehabilitation at Marworth and she signed this contract (DX 3). On January 20, 2007, the Respondent reported to the Marworth facility to begin her in-patient treatment program. She finished a 28 day program on a Saturday, but because the Respondent was aware that the Counseling Unit did not pick up members at Marworth on weekends, the Respondent knew that she was supposed to remain at Marworth over the weekend and that she would be transported home by the Counseling Unit on Monday. When Sweeney learned that the Respondent's husband had picked her up at Marworth on Friday night and was driving her home, he ordered her to return to Marworth because only the Counseling Unit could transport her home from the facility.

On cross-examination, Sweeney testified that on October 27, 2006, when the Respondent was referred by the Medical Division to the Counseling Unit based on a doctor's suspicion that she was abusing prescription pain killers, she met with other members of the Counseling Unit, one of whom was already certified, and evaluated. The Respondent never admitted that she had a problem regarding prescription pain killers but members of the Counseling Unit jointly determined that the Respondent was addicted to

prescription pain killers and needed in-patient rehabilitation. He conferred with those members but he did not speak with the Respondent himself until it was time for her to sign her contract. He acknowledged that he most likely told the Respondent that if she did not agree to the terms in the contract and refused to sign it, she would probably, not just possibly, be suspended. Sweeney acknowledged that he might have told members that if they did not agree to attend in-patient rehabilitation that they might be fired, but he had no recollection of having told the Respondent this. The Respondent initially did not agree to attend an in-patient treatment program and she only signed the contract on October 27, 2006 after she was spoken to by a supervisor in the Medical Division.

Sweeney acknowledged that most members who are referred to the Counseling Unit have alcohol problems. He denied that he had ever tried to stop anyone from leaving the Counseling Unit or that the Respondent had written "under duress" next to her signature on a contract. Sweeney testified that when he learned from Marworth that the Respondent's husband had picked her up at Marworth and was driving her home, he was not aware that they had already left Pennsylvania and were nearly home. Sweeney testified that when he later learned this, he apologized the next day to the Respondent for this mistake and told her he would have let her continue home if he had known that her car was so close to her home. The Respondent was not provided with a copy of the contract she signed on January 19, 2007, because under the policy in place at that time, members were not permitted to keep a copy of the contract. The Respondent was required to attend AA meetings and counseling sessions after completing her in-patient rehabilitation at Marworth.

Captain Jeffrey Mishula

Mishula testified that on December 19, 2006 and again on March 9, 2007, he ordered the Respondent to attend in-patient counseling. On both occasions the Respondent failed to comply with the order he issued. Mishula recalled that on March 2, 2007, he consulted with Dr. Charles Martinez who told him that he had examined the Respondent on March 1, 2007, and that it was his belief that the Respondent had a problem with regard to using prescription drugs. Mishula testified that it was this statement that Dr. Martinez made to him that was the basis for the order he issued to the Respondent on March 9, 2007.

On cross-examination, Mishula testified that he had no present recollection that he had ever overruled a Counseling Unit recommendation that a member of the service be required to attend in-patient treatment. Mishula testified that it was his understanding that the personnel in the Counseling Unit were the experts with regard to determining the need for a member to attend in-patient counseling. Mishula acknowledged that when the Counseling Unit told a member that the member needed in-patient counseling and the member refused to attend in-patient counseling, the member would be referred to the Medical Division with regard to possible suspension. Mishula testified that he took time to explain to the Respondent why she was being ordered to in-patient treatment and that the Respondent's husband was present with the Respondent when Mishula directed her to attend in-patient counseling on March 9, 2007. Mishula testified that he was not aware that the members who sign a contract with the counseling unit do not receive a copy of that contract. He testified that he assumed that the Respondent knew what was contained in the contract that she had signed. Mishula testified that he was informed by the

Counseling Unit that the Respondent had violated a contract provision that required the Respondent to inform the Counseling Unit before she consumed any prescription drug. Mishula testified that it was on the basis of this information that he suspended the Respondent.

Sergeant Nicholas Auriana

Auriana, who is assigned as an ACIU field supervisor, recalled that on July 27, 2006, he was assigned to investigate the Respondent regarding an "exaggerating injury" investigation. He testified that at about 0950 hours on that date he was conducting "life-style observations" in an unmarked Buick Century Department automobile with tinted windows. He sat in this vehicle outside of the Respondent's residence at [REDACTED] [REDACTED]. At about 0950 hours, the Respondent came out of her residence and left the area. Auriana contacted the Medical Division's Absence Control Division and determined that the Respondent had called in stating that she would be out-of-residence for a doctor's appointment. At about 10:20 hours, Auriana observed the Respondent arrive back home accompanied by her husband and son in a blue Jeep Liberty. Auriana remained in front of the Respondent's residence and, about one hour later, the Respondent again left her residence with her husband and son. Her husband was driving the blue Jeep Liberty. Auriana testified that he followed their vehicle in his Buick Century and that they traveled on the Van Wyck Expressway to Bensonhurst. He observed that when the vehicle stopped in Brooklyn between 20th and 21st Avenues, her son got out of the vehicle. Auriana then followed the Respondent and her husband back to their residence. Auriana testified that at one point he pulled his vehicle up next to the

Respondent's vehicle and that he was clearly able to observe the Respondent who was seated in the front passenger seat. He testified that he was certain that the woman he saw in the front passenger seat was not in her late teens or twenties. Auriana testified that his identification of the Respondent's face was based on a photo that he had obtained of the Respondent from her Department ID card (CX 1).

On cross-examination, Auriana testified that his identification of the two men as being the husband and son of the Respondent was not based on photographs he had seen of either of them but rather on the approximate ages of the men. Auriana testified that when the Respondent arrived back at her residence, got out of the jeep, and walked through her front door, he was able to observe her for about 20 seconds. When he was asked if anyone from the Internal Affairs Bureau had come to the house while he was there, he testified that Sergeant Julian had come to his observation location. Auriana testified that it was possible that other individuals had entered the Respondent's residence while he was there, but that on his worksheet he only made entries that related to the Respondent entering or exiting the residence. Auriana testified that during two days in August, he observed the Respondent commuting to work in the same blue Jeep Liberty vehicle he had observed her occupying on July 27, 2006.

Auriana testified that when he conducted an official Department interview of Police Officer Gibson, she told him that she had observed the Respondent standing by the Medical Division sign-in/sign-out log with a pen in her hand between 1130 hours and 1145 hours.

The Respondent's Case

The Respondent called her husband Luis Romero, her son Gabriel Romero and Dr. Vijaypal Arya as witnesses and testified in her own behalf.

Luis Romero

Romero, a New York City Fire Department Inspector whose duties involve conducting fire safety and code violation inspections in buildings, testified that he and the Respondent reside in [REDACTED], with their son, Gabriel and their daughter, [REDACTED].

He recalled that during July, 2006, he drove his son to Brooklyn to visit a friend. His niece, [REDACTED] who is 19-years old, came with them on the trip to Brooklyn.

Romero recalled that on October 26 or 27, 2006, he received a call from the Department Counseling Unit. He testified that an individual who identified himself as Mike Bahrenburg told him that his wife needed in-patient rehabilitation because she was "taking way too many meds." Romero recalled that when he asked him whether he was a physician, he told him, "No. I'm an expert in the field." Romero testified that he consulted with a lawyer in regard to this matter and that the lawyer advised him to tell his wife that she should sign "under duress." Romero testified that his wife told him that she was suffering excruciating pain. He recalled that when he drove to the in-patient facility in Marworth, Pennsylvania, and informed personnel there that his wife was suffering pain, he was told that the facility was not a hospital. He testified that when he drove his wife to [REDACTED] Hospital, he was informed that she was suffering from an [REDACTED].

On cross-examination, he testified that on July 26, 2006, he drove the Respondent to her doctor's office and also drove her home. Romero recalled that when he picked the

Respondent up at Marworth on November 2, 2006, he did not advise her to call 911 and that he did not call 911 or request that an ambulance respond to Marworth. He testified that he did not ask anyone at Marworth whether the facility was affiliated with a local hospital.

Gabriel Romero

Gabriel, who is now 20-years old, testified that during July, 2006, his father drove him to Brooklyn to the house of his girlfriend, [REDACTED]. Gabriel recalled that his cousin, [REDACTED] who was then 19-years old, was in the car with them.

Dr. Vijaypal Arya

Dr. Arya testified that he examined the Respondent on October 20, 2006 and again on October 24, 2006. On both occasions the Respondent complained that she was suffering from [REDACTED] and that she had [REDACTED]. Dr. Arya testified that he confirmed that the Respondent was [REDACTED] and since he believed this might be the result of an [REDACTED], he prescribed the antibiotic [REDACTED] for the Respondent. Dr. Arya recalled that he informed the Respondent that she needed to undergo a colonoscopy "the sooner the better."

Dr. Arya recalled that on November 3, 2006, the Respondent was admitted to [REDACTED] Hospital. Dr. Arya testified that he examined the Respondent and saw that her [REDACTED] was not getting better and that is why she needed to be admitted to the hospital. He testified that although the Respondent was not completely [REDACTED] as of

November 9, 2006, she was discharged from the hospital because she "was better" than she was when she entered the hospital

Dr. Arya testified that on December 19, 2006, the Respondent told him that the Police Department had ordered her to attend in-patient treatment. Dr. Arya told her that because of her condition, she should not "leave my care." Dr. Arya told the Respondent to make sure that the facility she was going to had access to medical care, specifically expertise with regard to treating diseases of the colon. Dr. Arya testified that based on a pill-swallowing test he performed on the Respondent on December 5, 2006, and a subsequent x-ray of the Respondent's digestive system that was performed on December 20, 2006, he determined that the Respondent had no [REDACTED] in that her system was not absorbing food. To treat the Respondent's symptoms, Dr. Arya prescribed [REDACTED] which contains phenobarbital. He recalled that he provided a prescription that was good for about three months. He testified that [REDACTED] is an [REDACTED] and a pain reliever. Dr. Arya testified that [REDACTED] has a "very, very low abuse potential." He testified that it is a commonly prescribed medication.

Dr. Arya testified that at no time did the Respondent ever ask him to provide her with more drugs than he had prescribed for her.

On cross-examination, Dr. Arya testified that he was aware that the Respondent was being treated by other physicians. He conceded that the only way he would know if these other physicians were prescribing drugs would be if the Respondent informed him about this. He testified that he was not aware that on June 28, 2005, Dr. Kvelney provided the Respondent with a prescription for [REDACTED] or that on December 16, 2005, Dr. Naystat provided the Respondent with a prescription for

██████████ or that on August 25, 2006 Dr. Konnikow prescribed ██████████ for the Respondent to relieve her pain; or that on July 5, 2005 Dr. Naystat prescribed a muscle relaxant for the Respondent called ██████████; or that on June 26, 2006, Dr. Kvelney issued a prescription to the Respondent for ██████████ which improves digestive function; or that on June 26, 2006, Dr. Konnikow prescribed ██████████ for the Respondent; or that on September 20, 2006, Dr. Konnikow prescribed ██████████ for the Respondent, a drug which is similar to ██████████; or that on August 22, 2006, Dr. Moradi, the Respondent's gynecologist, prescribed the female ██████████ ██████████ to the Respondent; or that on September 21, 2006, Dr. Bennett issued the Respondent a prescription for ██████████ which Dr. Arya described as an ██████████ which is similar to ██████████ Dr. Arya testified that he has prescribed ██████████ to other patients. He acknowledged that this drug can be addictive. He testified that he was also unaware that on July 12, 2006, Dr. Naystat issued a prescription to the Respondent for ██████████ and that this prescription was for ██████████, an ██████████; or that on September 22, 2006, Dr. Galperin prescribed ██████████ for the Respondent. Dr. Arya testified that he does not know what this drug is.

Dr. Arya recalled that when he examined the Respondent for the first time on January 27, 2005, the Respondent told him that she had previously been prescribed ██████████. When Dr. Arya was asked if he ever consulted with Dr. Lichtenstein, the Department District Surgeon, Dr. Arya testified that he has no notes in his file that he ever did so.

With regard to February 23, 2007, Dr. Arya testified that at first he told health services that he did not prescribe ██████████ to the Respondent but he later admitted that he had issued the Respondent a prescription for ██████████. He recalled that the

Respondent telephoned him from Marworth, Pennsylvania. She told him that she was [REDACTED]. He advised her to go to a place where she could receive treatment. He testified that the Respondent decided to come home.

The Respondent

The Respondent testified that while she was on duty during February, 2004, she hit her head on a metal firebox. As a result, she suffered a full concussion and a neck sprain and she was out on sick leave for three weeks. She then underwent physical therapy for her injury. The Respondent recalled that during May, 2004, she suffered a [REDACTED]. In July, 2004, she underwent surgery. In June, 2005, the Respondent underwent a [REDACTED] which revealed that her [REDACTED] [REDACTED] together. This required that her [REDACTED] and reconnected and that part of her [REDACTED]. As a result of these surgeries, she was out on Department-approved sick leave from May, 2004 until September, 2005.

In September, 2005, she was restored to limited duty and was reassigned to the office of the Chief of Internal Affairs Bureau. She testified that at this time she was suffering 'bladder problems' and that as a result she had to spend two to three hours each day in the rest room. During October, 2006, her physician prescribed a [REDACTED] to help alleviate her condition. On October 26, 2006, she was ordered to report to the Counseling Unit. She was told that she should bring with her all of the medications she was taking. She recalled that when she appeared at the Counseling Unit that day, she brought with her 15 to 20 bottles of medications. However, she was not using all of these medications at that time. She testified that these bottles covered all of the medications

that she had been prescribed between February, 2004 and October, 2006. She had a conversation with a member of the Counseling Unit that day. The next day, Friday, October 27, 2006, she appeared at the Counseling Unit and was presented with a contract which required her to undergo 28 days of in-patient rehabilitation. She was told that if she did not agree to the terms of the contract and refused to sign the contract, she would be suspended. She testified that she consulted with an attorney who told her that since she had been ordered to sign and threatened with suspension, she should sign the contract. She testified that she then signed the contract. She was not provided with a copy of the contract.

The Respondent testified that on Saturday, October 28, 2006, she was driven to an in-patient facility in Marworth, Pennsylvania. She testified that during the first five days she was there, she saw that she had blood in her stool and that her pain was getting worse. She testified that on November 2, 2006, she "decided to come home." She telephoned her husband and asked him to pick her up at the facility. She testified that Sergeant Sweeney ordered her to report to the Medical Division. There, Deputy Inspector Holloran ordered her to go back to Marworth or she would be suspended. She testified that on November 3, 2006, she was admitted to [REDACTED] Hospital for six days.

On December 4, 2006, she was restored to modified duty at the Queens Court Section. She testified that the next day, December 5, 2006, she was directed by her doctor to swallow a "pill cam," for the purposes of having an x-ray. She testified that on December 19, 2006, she told Captain Mishula about the "pill cam" and the x-ray which was scheduled to take place the next day. She recalled that Captain Mishula consulted with the Counseling Unit via telephone. She was then suspended again.

On January 19, 2007, the Respondent was once again at the Medical Division. She testified that she was again directed to sign a contract agreeing to attend in-patient rehabilitation. She signed the contract but when she wrote "under duress" next to her signature, the contract was ripped up.

On January 20, 2007, the Respondent reported to the Marworth facility to begin her 28-day, in-patient treatment program. At the conclusion of the 28 days, Marworth provided her with discharge papers, but she was informed because it was the weekend the Counseling Unit would not be picking her up from the facility until the following Monday. Her husband picked her up at Marworth to drive her home. As they were nearing the George Washington Bridge, Sergeant Sweeney called and ordered her to go back to Marworth or she would be suspended. She told her husband to turn the car around and she returned to Marworth. When the Counseling Unit picked her up from the facility on Monday, she had been there 31 days.

The Respondent testified that on March 9, 2007, she was again ordered by Captain Mishula to return to Marworth and undergo another 28-day, in-patient rehabilitation program. She testified that she refused to comply with this order because she had already completed a full-month program only two weeks prior to March 8, 2007. The Respondent testified that she was told that this order was being issued because she had relapsed based on a March 5, 2007, urine sample which had tested positive. The Respondent asserted that her urine tested positive only because Dr. Arya had prescribed [REDACTED] for her after an endoscopy on February 23, 2007. The Respondent testified that because she was not provided with a copy of the contract she had signed on January 19,

2007, she had forgotten that the contract required her to notify the Counseling Unit before she took a medication that had been prescribed to her by her doctor.

On cross-examination, the Respondent testified that she never left her residence while she was on sick report on July 26, 2006. The Respondent was confronted with a statement she made at her official Department interview, which was conducted on September 27, 2006, that she had left her residence on July 26, 2006, to travel to her doctor's office. The Respondent testified that her husband was wrong when he testified that he had accompanied her to her doctor's office and that he had driven her home.

The Respondent testified that while she was on sick report on July 27, 2006, she never left her residence to accompany her husband and her son on a drive to Brooklyn. The Respondent testified that the female who was inside the car with her husband and her son when they drove to Brooklyn was her niece. The Respondent was confronted with a statement she made at her official Department interview that the female who was in the car with her husband and her son as they drove to Brooklyn was her son's girlfriend. The Respondent testified that she had been wrong at her official Department interview.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82635/07

Specification Nos. 1 and 2

It is charged that while she was on sick report on July 26 and 27, 2006, the Respondent was wrongfully and without just cause out of residence without having received permission from Officer's District Surgeon or the Medical Division Sick Desk Supervisor.

The Respondent asserted that this is a case of mistaken identity. She argued that both McCole and Auriana observed her niece, who was 19-years-old at the time, coming out of the residence and riding in her car with her husband and mistakenly assumed that she was the Respondent. Thus, the question presented is whether the record establishes that the identifications made by McCole and Auriana are reliable. I find the Respondent Guilty based on the credible testimony of McCole and Auriana regarding their observations of the Respondent outside her residence on July 26 and 27, 2006.

Because McCole had never previously seen the Respondent, McCole specifically recalled that prior to going to the Respondent's residence on July 26, 2006, he obtained a photo of the Respondent from Auriana. He testified that he parked his unmarked vehicle across the street from the Respondent's residence and that he used binoculars to observe the Respondent when she exited the front door of the residence. Finally, he testified that as the Respondent's Hyundai was traveling on the Van Wyck Expressway, he pulled his vehicle up directly next to the Respondent's vehicle and that when he looked over at the Respondent he could see her face clearly.

Auriana also testified that he had a photocopy of the Respondent's Department ID card photo (CX 1) with him when he conducted an observation of her on July 27, 2006; that he also pulled his vehicle up next to the Respondent's vehicle and was able to clearly observe her face while she was seated in the front passenger seat; and that he was certain that the woman he saw in the front passenger seat was not in her late teens or early twenties. Moreover, Auriana testified that when the Respondent arrived back at her residence and walked to her front door he was again able to observe her and that during

two days in August, he observed the Respondent commuting to work in the same vehicle he had observed her in on July 27, 2006.

I cannot credit the Respondent's claims that she did not leave her residence on either of these two days because of the inconsistent statements she has made. After the Respondent testified in the trial room that she never left her residence at all while she was on sick report on July 26, 2006, the Respondent was confronted with a statement she made at her official Department interview that she had left her residence on July 26, 2006 to travel to her doctor's office. The Respondent even contradicted the testimony of her own husband. The Respondent refuted her husband's testimony by asserting that he was wrong when he testified that he had driven her home from her doctor's office. The Respondent has also made inconsistent statements regarding who accompanied her husband and her son when they drove to Brooklyn on July 27, 2006. The Respondent testified in the trial room that the female who was inside the car with her husband and her son was her niece. However, at her official Department interview, the Respondent stated that the female who was in the car with them was her son's girlfriend.

The Respondent is found Guilty.

Specification Nos. 3 and 4

It is charged that while she was on-duty on August 8, 2006, the Respondent wrongfully made a false entry in a Department record in that although she left the Medical Division at about 1130 hours, she entered a sign out time of 1323 hours in the Medical Division log and that she was absent without leave between 1130 hours and 1323 hours.

I find the Respondent Guilty based on the credible testimony of Valenti that he saw the Respondent come out of the District Surgeon's office about 1120 hours; that Gibson told him that she had seen the Respondent standing at the log book with a pen in her hand; that he called the Respondent's commanding officer, Lieutenant Blackford, and learned that the Respondent had requested to take lost time from 1315 hours to 1523 hours but that the Respondent had not requested to be allowed to take her meal at the Medical Division; and that at 1317 hours he observed that the Respondent had entered a sign-out time of "1323" hours in the Medical Division log [Department's Exhibit (DX) 1].

Under Patrol Guide 212.02, the Respondent was required to obtain authorization from her commanding officer to take her meal at the Medical Division after her appointment with the District Surgeon was completed and she did not obtain the required authorization. The mere fact that about half of the members of the service who signed into the Medical Division log that week never signed out when they left the Medical Division, does not excuse the Respondent's misconduct of making a false time entry in that Department record.

The Respondent is found Guilty.

Disciplinary Case No. 82402/06

Disciplinary Case No. 82510/07

Disciplinary Case No. 82732/07

Introduction

Under each of these three cases, it is charged that the Respondent failed to comply with an order issued by a superior officer requiring her to comply with a directive of the

Counseling Unit that she complete an in-patient counseling program. The Respondent's position that these orders were unlawful is based solely on her own belief that she was not addicted to pain medications and her assertion that the Counseling Unit possessed insufficient expertise to determine that she was addicted to pain medications. However, I find that the record sufficiently establishes that there were reasonable grounds for the issuance of these directives.

Initially, I would note that it is not disputed that on October 1, 2006 (prior to the November 2, 2006 issuance of the first order directing the Respondent to attend in-patient counseling) the Counseling Unit was awarded an operating certificate by the State of New York Office of Alcohol Abuse Services. Moreover, the Counseling Unit's determination that the Respondent was abusing pain medications was supported by a Department District Surgeon. I credit Lieutenant Valenti's testimony that on October 24, 2006 (again, prior to the November 2, 2006 issuance of the first order directing the Respondent to attend in-patient counseling), Dr. Lichtenstein, the District Surgeon, stated that it was his medical opinion that the Respondent was abusing prescription medications. Moreover, the Respondent admitted that when she initially appeared at the Counseling Unit, she brought with her numerous bottles of pain medications she had been consuming over an extended period of time and, on cross-examination, the Respondent admitted to a long list of medications that had been prescribed for her by multiple physicians to relieve her pain and other symptoms.

Thus, the record establishes that there was a reasonable, factual basis for the Counseling Unit's determination that the Respondent was addicted to pain medications and for the issuance of these in-patient treatment orders. Where an order is not clearly

illegal, the order must be obeyed and an officer can only challenge an order after fully complying with the order.¹ The Respondent did not establish that the orders issued in these three cases were illegal.

With regard to Disciplinary Case No. 82402/06, it is not disputed that after the Respondent was ordered, on November 2, 2006, by Deputy Inspector Holloran to complete an in-patient counseling program, she initially complied by reporting to Marworth and participating in the program there for five days. It is further undisputed that the Respondent then left Marworth and returned to New York. I credit the Respondent's testimony that she was in pain at Marworth because Dr. Arya testified that he examined her upon her return to New York and determined she was suffering from an [REDACTED] and needed to be admitted to a hospital. However, although the Respondent contended that she only left Marworth because she needed immediate medical care, the record does not support the Respondent's contention that she had no choice but to leave Pennsylvania and return to New York. The Respondent acknowledged that she never told Deputy Inspector Holloran that she needed to be taken to a hospital immediately. Rather, she admitted that she had only told him that she had returned home because she wanted to obtain medical treatment. The Respondent was aware at the time she left Marworth that she was failing to full comply with Deputy Inspector Holloran's order because she had not yet completed the inpatient program there. Yet, the Respondent acknowledged that she never even attempted to remain there by requesting that Marworth staff take her to a local doctor or to a local hospital so that she could be treated for her [REDACTED] without violating Deputy Inspector Holloran's order.

¹ See Disciplinary Case Nos. 81394/05, 81513/06 and 81644/06 (approved on September 15, 2006) and Disciplinary Case Nos. 83160/07 and 83221/07 (approved on September 12, 2007).

With regard to Disciplinary Case No. 82510/07, the Respondent acknowledged that she did not comply with the order issued by Captain Mishula, on December 19, 2006, that she immediately report for in-patient counseling. The Respondent asserted that the only reason why she failed to comply with this order was because her physician had already arranged for her to be x-rayed on December 20, 2006. The Respondent had no right to ignore Captain Mishula's order merely because she had a previously scheduled medical test which would have been inconvenient to reschedule.

Finally, with regard to Disciplinary Case No. 82732/07, it is not disputed that the Respondent failed to comply with the order issued by Captain Mishula on March 9, 2007, that she report for in-patient counseling. The Respondent acknowledged that she was told that this order was being issued because she was considered to have relapsed when her March 5, 2007, urine sample had tested positive. I credit the Respondent's testimony that her urine tested positive because Dr. Arya had prescribed [REDACTED] for her after her [REDACTED] on February 23, 2007, because her claim was corroborated by Dr. Arya. However, I reject the Respondent's contentions that she was justified in refusing to comply with Captain Mishula's order because she had just completed an in-patient counseling program, because she had tested positive only because she used a medication prescribed by her physician, and because she was not provided with a copy of the contract she had signed on January 19, 2007, and claimed to be unaware that the contract included a clause that she had to notify the Counseling Unit "of all prescriptive drugs before filling or taking prescriptions." (DX 3) Since this notification requirement was also contained in the first contract the Respondent signed (DX 2), I find that the Respondent was fully aware that she had to notify the Counseling Unit before consuming

any prescription medication. Also, the fact that she had just completed an in-patient counseling program and the fact that she had tested positive only because she used a medication prescribed by her physician, did not give the Respondent the right to reject the order issued by Captain Mishula.

The Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on January 13, 1992. Information from her personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found guilty of having left her residence while on sick report on two consecutive days without having received permission and of having made a false entry in a Department record that she left the Medical Division at 1323 hours when she had actually left at about 1130 hours causing her to be absent without leave (AWOL) from 1130 hours to 1323 hours. Generally, penalties requiring only forfeiture of vacation days have been imposed on members who have been found guilty of being out of residence without permission while on sick report on two occasions, making one inaccurate time entry in a Department log and being AWOL on a single occasion for two hours.

However, the Respondent here has also been found Guilty of having failed to comply with three orders to attend in-patient counseling. In evaluating this misconduct to

determine an appropriate penalty recommendation, I have taken into consideration the fact that this is not a situation where an officer has consistently refused to comply with each and every order she finds disagreeable. On the contrary, the record establishes that the Respondent complied with four separate orders requiring her to report for in-patient counseling and subsequent testing. The Respondent complied with the initial order that was issued to her to report for in-patient counseling at Marworth and, although she should have sought assistance from the staff there in obtaining medical treatment for her infection instead of leaving after five days, her subsequent hospitalization establishes that she had a legitimate medical problem. The Respondent also complied with an order issued on January 19, 2007, that she report for in-patient counseling and she successfully completed Marworth's in-patient program. The Respondent also complied with the Sergeant Sweeney's February 16, 2007 order that she turn her car around and return to Marworth, even though she had received permission from Marworth to leave the facility because she had successfully completed their program, and even though at the time he issued this order to her she was nearly home. Finally, the Respondent complied with the order that she report and provide a urine sample on March 5, 2007.

Also, with regard to Captain Mishula's December 19, 2006 order that she immediately report for in-patient counseling, the Respondent offered uncontroverted testimony that the only reason she did not comply with this order was because her physician had scheduled an x-ray, of the "██████████" that was inside her, on December 20, 2006, and if she missed this x-ray the "██████████" procedure would have to be repeated. It is not clear why the Respondent was not accommodated by granting her a one-day delay in reporting for in-patient counseling.

Disciplinary Case Nos. 83160/07 and 83221/07 (approved on September 12, 2007) involved a factual situation similar to that presented here. In that decision, a seven-year officer who had one prior disciplinary adjudication was required to forfeit 60 suspension days and was placed on dismissal probation after he was found guilty of having failed to comply with two separate orders, one to attend in-patient counseling and one to attend out-patient counseling. In that decision, as here, the officer suffered from serious and persistent pain caused by a work-related incident and the officer was directed to attend in-patient counseling based on a finding that he was abusing pain medications. However, in that case, the officer left the treatment facility recommended by the Counseling Unit before a full evaluation could be completed and he not only refused to comply with an order that he return to the facility, but he also refused to comply with a subsequent order that he attend out-patient counseling.

Here, although the Respondent cut short her initial stay at Marworth, when she was again ordered to report there she fully complied and successfully completed Marworth's in-patient counseling program. Thus, although the Respondent must be punished for her subsequent refusals to report back to Marworth for additional in-patient counseling regimens, the Respondent here at least completed an in-patient counseling program, unlike the officer in the cited case.

Also, it is clear that the Respondent here consumed medications to alleviate the pain she suffered as the result of a number of serious medical conditions. It is not disputed that since February, 2004, when she suffered a full concussion and a neck sprain, she has also suffered pain resulting from an [REDACTED] which required hospitalization, a [REDACTED], an

and part of her [REDACTED] removed.

The Assistant Department Advocate recommended that the Respondent be immediately dismissed from the Department. However, in light of the above-cited medical factors and in consideration of the fact that the Respondent has had no previous disciplinary adjudications in 16 years of service, I believe a penalty short of immediate separation is warranted. Nonetheless, imposition of a one year period of dismissal probation is appropriate here to ensure that the Respondent complies with sick leave procedures and with all further orders.

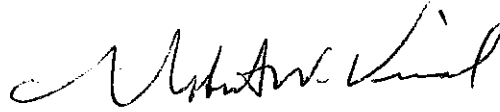
Therefore, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Section 14-115(d) of the Administrative Code, during which time she remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Regarding the misconduct charged in Disciplinary Case No. 82402/06, the Respondent was suspended for 32 days from November 2, 2006 to December 3, 2006. Regarding the misconduct charged in Disciplinary Case No. 82510/07, the Respondent was suspended for 30 days from December 20, 2006 to January 18, 2007. Regarding the misconduct charged in Disciplinary Case No. 82732/07, the Respondent was suspended for 31 days from March 9, 2007 to April 8, 2007.

It is further recommended that the Respondent be required to forfeit all of the days she served on pre-trial suspension regarding these three cases and that she be required to forfeit an additional 30 suspension days as a penalty regarding the misconduct

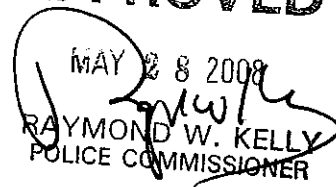
she has been found guilty of under Disciplinary Case No. 82635/07, for a total penalty forfeiture of 123 suspension days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED



MAY 28 2008
RAYMOND W. KELLY
POLICE COMMISSIONER